

**RESPONSE UNDER 37 C.F.R. § 1.116  
EXPEDITED PROCEDURE REQUESTED  
EXAMINING GROUP 1623**

PATENT

Customer No. 22,852

Attorney Docket No. 07579.0001-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue Application of:	)	
Graham Edmund KELLY	)	Group Art Unit: 1623
Reissue Application No.: 09/602,191	)	Examiner: Patrick T. Lewis
U.S. Patent No.: 5,830,887	)	Confirmation No. 8264
Filed: June 22, 2000	)	
For: HEALTH SUPPLEMENTS	)	
CONTAINING PHYTO-	)	
OESTROGENS, ANALOGUES	)	
OR METABOLITES THEREOF	)	

**MAIL STOP AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**THIRD SUPPLEMENTAL REISSUE DECLARATION**  
**UNDER 37 C.F.R. §§ 1.172 AND 1.175**

I, Graham Edmund Kelly, hereby declare that:

1. My residence, post office address, and citizenship are as stated below under my name.
2. I believe I am the original and the first inventor of the subject matter that is claimed in U.S. Patent No. 5,830,887 ("the '887 patent"), entitled "Health Supplements Containing Phyto-oestrogens, Analogues or Metabolites Thereof." The '887 patent was granted on November 3, 1998, and it is the subject of this reissue application number 09/602,191, filed June 22, 2000.

3. I claim priority under 35 U.S.C. § 119 to Australian application PL2511 filed on May 19, 1992.

4. I have reviewed and understand the contents of the above-identified reissue application, including the originally issued claims and the claims as filed in the Preliminary Amendment and as amended during prosecution, including in the Amendment and Response After Final filed herewith.

5. I acknowledge the duty to disclose information that is material to the examination of this reissue application in accordance with 37 C.F.R. § 1.56.

6. I believe that U.S. Patent No. 5,830,887 is partially inoperative by reason of my having claimed less than I had a right to claim.

7. An error that is the statutory basis for reissue is that the patent fails to contain claims of appropriate scope. Claims 11-13 are currently directed to:

[A] pharmaceutical preparation, in solid dosage unit form, the biologically active component of said preparation **consisting essentially of** any two or more concentrated, phytoestrogen-derived isoflavones selected from the group consisting of Genistein, Daidzein, Biochanin A, Formononetin or the natural glycosides of any of said phytoestrogens and said preparation including a pharmaceutically acceptable carrier.

At the time I filed the patent application, I did not appreciate that the invention could be more broadly expressed as:

[A] pharmaceutical preparation, in solid dosage unit form, having a biologically active component **comprising** phytoestrogens consisting essentially of (a) genistein component and (b) daidzein component, wherein component (a) optionally contains biochanin A, and component (b) optionally contains formononetin, or the natural glycosides of said phytoestrogens, and wherein the ratio of (a) to (b) is about 1:2 to 2:1, said preparation including a pharmaceutically acceptable carrier.

Nevertheless, I consider such a broad expression to be part of my invention, and I seek broadened claims in the present reissue application. In summary, I believe that claims 11-13 of the patent contained an error in that they claimed the invention too narrowly by the

use of the transition phrase "consisting essentially of" and that I now wish to correct that error by amending claims 11-13 to recite the broader transition phrase "comprising."

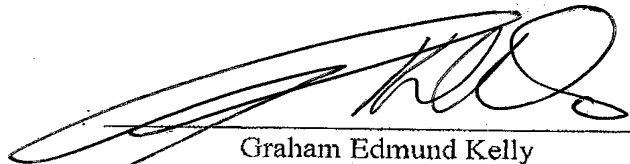
8. Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intent on the part of the applicant.

9. I hereby appoint the following attorney and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith:  
**FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.,**  
**CUSTOMER NUMBER 22,852.**

10. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date:

14/11/07



Graham Edmund Kelly

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Residence

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AUSTRALIAN

Citizenship